

# SOLICITOR

AO 120 (Rev. 3/04)

<p>TO: <b>Mail Stop 8</b>  <b>Director of the U.S. Patent and Trademark Office</b>  <b>P.O. Box 1450</b>  <b>Alexandria, VA 22313-1450</b></p>	<p style="text-align: center;"><b>AUG 10 2007</b></p> <p style="text-align: center;"><b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b></p>
--	--

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court Eastern District of Arkansas on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 4:07CV00602SWW	DATE FILED 6/29/2007	U.S. DISTRICT COURT Eastern District of Arkansas
PLAINTIFF MidSouth Metal Products, Inc.		DEFENDANT O.D. Funk Manufacturing, Inc.

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 US 6,279,289	8/28/2001	MidSouth Metal Products, Inc.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
--------------------

CLERK JAMES W. MCCORMACK	(BY) DEPUTY CLERK 	DATE 6/29/2007
--------------------------	-----------------------	-------------------

Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

JUN 29 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

JAMES W. MCCORMACK, CLERK  
By: *[Signature]*  
DEP CLERK

MIDSOUTH METAL PRODUCTS, INC., )

Plaintiff, )

Vs. )

O.D. FUNK MANUFACTURING, INC. )

Defendant. )

No. **4-07-CV-00602 SMH**

**JURY DEMANDED**

This case assigned to District Judge *Wright*  
and to Magistrate Judge *Heere*

**COMPLAINT FOR PATENT INFRINGEMENT**

**I**  
**PARTIES**

1. Plaintiff MidSouth Metal Products ("MidSouth") is a corporation organized and existing under the laws of the State of Tennessee. MidSouth's principal place of business is located at 50 Easley, Collierville, Tennessee 38017. Plaintiff MidSouth is engaged in the manufacture of metal products, including its VersaTube™ Building System.

2. Defendant O.D. Funk Manufacturing, Inc. ("O.D. Funk") is a corporation organized and existing under the laws of the state of Arkansas with its principal place of business located at 300 Trammel Road, North Little Rock, Arkansas 72117. Defendant O.D. Funk manufactures a competing product under the trade name Panther Creek.

**II**  
**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1338(a). This action arises under the constitutional laws of the United States, including the patents laws enacted by Congress set forth in 35 U.S.C. §§ 1, *et seq.*

4. This Court has personal jurisdiction over Defendant O.D. Funk because its principal place of business is within the state of Arkansas and within this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 9c) and § 1400(b), because Defendant O.D. Funk is subject to personal jurisdiction in this judicial district and resides in this district.

### III. INFRINGEMENT OF U.S. PATENT NO. 6,279,289

6. Plaintiff MidSouth's predecessors in interest were granted a patent by the United States Patent Office, No. 6,279,289, hereinafter referred to as "the '289 Patent". A true and exact copy of this patent is attached hereto as **Exhibit A** and incorporated herein by reference.

7. Plaintiff MidSouth is assignee of, and possesses all substantial rights to, the '289 Patent. This patent is in full force and effect. Plaintiff has standing to sue for infringement of the '289 Patent.

8. Attached hereto as **Exhibit B** is a description of the competing product manufactured by the Defendant under the trade name Panther Creek. This product infringes upon the '289 Patent, either directly, by act of inducement, by contributory infringement, and otherwise under 35 U.S.C. § 271.

9. By reason of Defendant O.D. Funk's acts of infringement, Plaintiff MidSouth has suffered and is suffering damages in an amount yet to be determined.

10. Defendant O.D. Funk's acts of infringement are causing irreparable harm for Plaintiff and will continue to cause irreparable harm unless enjoined by this Court.

11. Defendant O.D. Funk's continued infringement of the '289 Patent after demands that it cease this infringement is willful and justifies a trebling of damages, pursuant 35 U.S.C. § 284.

Further, this is an exceptional case supporting an award of reasonable attorney's fees, pursuant to 35 U.S.C. § 285.

**IV.**  
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff MidSouth prays that the Court grant the following relief:

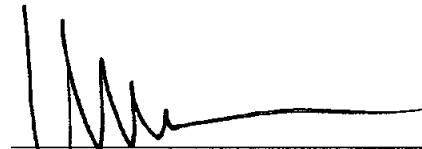
1. That Defendant O.D. Funk, its officers, partners, employees, agents, representatives, attorneys and all persons acting and claiming to act on its behalf or under its direction or authority and all persons acting in concert and participation with Defendant O.D. Funk be enjoined during the pendency of this action and thereafter during the term of the '289 Patent from:
  - a) Making, using, offering for sale, selling, exporting, or otherwise applying any all infringing devices and any products or infringing methods that violate the '289 Patent; and
  - b) Inducing others to violate the '289 Patent, or contributing to such infringement.
2. That Defendant O.D. Funk be required to deliver to Plaintiff MidSouth for destruction any and all advertising, marketing or distribution materials related to Defendant O.D. Funk's infringing products.
3. That Defendant O.D. Funk be required to account for and pay over to Plaintiff the cumulative damages sustained by Plaintiff MidSouth by reason of Defendant O.D. Funk's unlawful acts of patent infringement; that the amount of recovery be increased as provided by law, up to three times, and that interest be awarded to Plaintiff, both prejudgment and postjudgment.
4. That Plaintiff MidSouth be awarded its reasonable costs and attorney's fees.

5. That Plaintiff MidSouth have such other and further legal or equitable relief as the Court may deem necessary or appropriate.

V.  
**DEMAND FOR JURY TRIAL**

Plaintiff MidSouth hereby demands a trial by jury for each and every issue so permitted by law.

Respectfully submitted,



William P. Dougherty (Ark. Bar #73028)

Grady M. Garrison, (#8097)

Michael Richards, (#7973)

Attorneys for Plaintiff,

MidSouth Metal Products, Inc.

Baker, Donelson, Bearman, Caldwell &

Berkowitz, P.C.

First Tennessee Building

165 Madison Avenue

Memphis, Tennessee 38103

(901) 526-2000

wdougherty@bakerdonelson.com

ggarrison@bakerdonelson.com

mrichards@bakerdonelson.com